

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 32607 of 2005(F)

AGAINST THE ORDER IN OPMV 1831/1993 IN
IA.2734/2004 of I ADDL. DISTRICT COURT, PALAKKAD
.....

PETITIONER:

VINODKUMAR, S/O. CHATHU,
"KRIPALAYAM", PANTHEERAMKAVU P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.LIJU. M.P
SRI.M.V.BIPIN

RESPONDENTS:

1. ASHOKAN, S/O. KUTTAN,
"KRISHNAPURAM", MANNIKEDATHPARAMBU,
ERANHIPALAM P.O., CALICUT.

2. THE NEW INDIA ASSURANCE CO. LTD.,
K.V. COMPLEX, KALLAT ROAD, CALICUT,
KOZHIKODE DISTRICT.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ
SRI.THOMAS MATHEW NELLIMOOTTIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 32607 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AWARD DATED 29.07.2000 PASSED BY THE ADDL. MACT, PALAKKAD IN OP(MV) 1831/1993.

EXT.P2 : TRUE COPY OF THE REGISTRATION CERTIFICATE IN RESPECT OF VEHICLE NO.TN-37-E-5238.

EXT.P3 : TRUE COPY OF THE REVIEW PETITION VIZ. IA 2754/2004 IN OP(MV) 1831/1993 ON THE FILE OF ADDL. MACT, PALAKKAD.

EXT.P4 : TRUE COPY OF THE COUNTER TO EXT.P3 FILED BY THE RESPONDENT NO.2.

EXT.P5 : TRUE OCPY OF THE ORDER DT.25.08.05 PASSED IN IA 2754/2004 IN OP (MV) 1831/1993 ON THE FILE OF ADDL. MACT, PALAKKAD.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32607 OF 2005

Dated this the 8th day of August, 2007

JUDGMENT

The petitioner seems to have a genuine grievance. On reading through Ext.P5 impugned order it appears to me that even the MACT was of the opinion that the case projected by the petitioner in the Revision Petition was not untrue. The grievance of the petitioner is that though he was arrayed as the owner of the offending vehicle, as a matter of fact even prior to the accident he had parted with ownership of the vehicle and even as per the register of the Motor Vehicle Department somebody else was the owner. The learned Tribunal after noting that there was truth in what the petitioner has found that there was no convincing explanation for the delay of 4 years which had been caused in the matter. Sri.Thomas Mathew Nellimoottil, counsel for the Insurance Company submits that the petitioner was very much present before the MACT and nothing prevented him from urging the present grounds before the MACT.

I have considered the rival submissions. Though it is true that Ext.P1 shows that the petitioner was represented by Sri.T.Ashokan before the MACT, a reading of paragraph 6 of Ext.P1 award will show that apart from engaging Advocate Sri.Ashokan for defending him, the

petitioner did not do anything. This gives credence to the case of the petitioner that he was under the bonafide impression that since he was no longer the owner of the offending vehicle on the date of the accident, he will be exonerated and that his defence will be taken care of the Insurance Company. The old number of the vehicle was KRD 1683 and the same is now re-registered as TN 37-E/5238. It has been admitted by the Insurance Company that there was a valid policy issued in respect of the vehicle No.KRD 1683.

In view of the discernible position that the number is only the new number assigned to the offending vehicle after its re-registration the case of the petitioner that he is not to be made liable has considerable force. At the same time it is to be noticed that there was considerable laxity on the part of the petitioner in not appraising the MACT of the factual situation obtaining in the case. I am of the opinion that the petitioner will have to be mulcted with cost which will at least to a certain extent be adequate compensation for the inconvenience which has been caused to all concerned including the Insurance Company. I set aside Ext.P5 and allow the Review Petition filed by the petitioner on condition that the petitioner pays a total amount of Rs.3,000/- by way of cost. Out of this amount, Rs.1,000/- will be paid to the High Court Legal Services Committee and Rs.1,000/- each will be paid to the petitioners before the

MACT, through their counsel in this court or in the court below and to the Insurance Company through their counsel in this court. Payment as directed above will be made within one month from today. Once the amounts are paid, the order allowing the review petition will become operative and thereupon the Tribunal will post the OP (MV) No. 1831/93 for further trial. It is made clear that the question as to whether the vehicle was covered by a valid and subsisting insurance policy will be decided by the Tribunal without being unduly influenced by any observations made by me in this judgment and the circumstance that I allowed the review petition.

PIUS C. KURIAKOSE, JUDGE

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